

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Carrier Current Systems, including	)	ET Docket No. 03-104
Broadband over Power Line Systems	)	
	)	ET Docket No. 04-37
Amendment of Part 15 regarding new	)	
requirements and measurement	)	
guidelines for Access Broadband over	)	
Power Lines Systems	)	

**Opposition and Motion for Summary Dismissal of Petition for  
Issuance of Further Rulemaking**

The United Power Line Council (“UPLC”) hereby moves that the Commission summarily dismiss or deny the Petition for Issuance of Further Notice of Proposed Rulemaking filed by the ARRL, the National Association for Amateur Radio.<sup>1</sup> Although ARRL’s filing is styled as a petition for further rulemaking, it is really nothing more than a late-filed petition for reconsideration, which should be denied on procedural grounds. Even if the pleading is treated as a rulemaking petition, the Commission should still dismiss or deny it because it is premature, given that the proceeding is still underway.<sup>2</sup> Alternatively, the Commission

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<sup>1</sup> Petition for Issuance of Further Rulemaking filed by ARRL, the National Association for Amateur Radio in ET Docket No. 04-37 (Oct. 18, 2005)(“ARRL Petition”).

<sup>2</sup> See Section 1.401(e) (Petitions which are moot, premature, repetitive, frivolous, or which plainly do not warrant consideration by the Commission may be denied or dismissed without prejudice to the petitioner.)

should deny the petition because it challenges rules that have not been given a chance to work.<sup>3</sup>

**I. The Commission should dismiss the filing as a late-filed Petition for Reconsideration.**

In seeking review of the rules adopted in the recent BPL Report and Order<sup>4</sup>, ARRL's filing amounts to a late-filed Petition for Reconsideration. ARRL asks the FCC to prohibit BPL operations in the HF band on medium-voltage lines; to restrict BPL operations from operating on certain Ham frequencies on low-voltage lines; and to revise the extrapolation factor for measuring radiated emissions.<sup>5</sup> Each of these points directly challenges recent FCC decisions concerning appropriate BPL rules. The FCC rules only restrict BPL operations in certain specified exclusion zones and bands where certain critical federal government communications systems operate; and the FCC explicitly declined to extend similar protections to Amateur operations. Similarly, the FCC considered and declined to revise the extrapolation factor in the BPL Report and Order.

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<sup>3</sup> Some of the rules are not even effective yet. See OET Announces United Telecom Council to Serve as Database Manager for Access Broadband Over Power Line Systems; Sets Deadline for Information Submission, *Public Notice*, DA 05-2701 (rel. Oct. 13, 2005).

<sup>4</sup> *Carrier Current Systems, including Broadband over Power Line Systems*, Report and Order, ET Docket No. 04-37, 19 F.C.C.R. 21,265 (“*BPL Report and Order*”).

<sup>5</sup> ARRL Petition at 13-14.

Petitions for reconsideration were due on February 7, 2005, thirty days after the BPL Report and Order was published in the Federal Register.<sup>6</sup> The 30-day deadline is statutory,<sup>7</sup> so the Commission lacks jurisdiction to waive it.<sup>8</sup> Therefore, ARRL's petition is not acceptable for filing.

**II. The ARRL filing is premature and should be dismissed or denied.**

Inasmuch as the FCC BPL proceeding is still underway, the ARRL petition also is premature and should be dismissed or denied in accordance with Section 1.403(e) of the Commission's rules. Petitions for reconsideration are still pending, which could affect the need for the relief sought in ARRL's filing. Commission consideration of the ARRL filing at this time could lead to confusion in deciding remaining issues or delay the resolution of the present proceeding. Conversely, dismissal of the filing would not prejudice ARRL's interests. As such, the Commission should dismiss or deny ARRL's filing as premature.

**III. The ARRL challenges rules before they have been given a chance to work.**

The BPL Report and Order explained that there was a low probability of harmful interference from a BPL system operating in

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<sup>6</sup> *Broadband Power Line Systems*, 70 Fed. Reg. 1360 (Jan. 7, 2005).

<sup>7</sup> 47 U.S.C. Sec. 405(a).

<sup>8</sup> See e.g., *Reuters, Ltd. v. FCC*, 781 F.2d 946, 951 (D.C. Cir. 1986); *Pay Telephone Reclassification and Compensation*, 18 FCC Rcd 7615 at para. 3 (2003).

compliance with the new rules. By contrast, notwithstanding its explicit recognition that several BPL systems have not caused and are not likely to cause harmful interference to licensed radio systems, the ARRL claims that interference from BPL systems is “inevitable” under the new rules.<sup>9</sup> The BPL Report and Order establishes safeguards that require BPL operators to mitigate interference and to post information about their systems to facilitate the informal resolution of complaints. Meanwhile, the ARRL considers this a “band-aid approach” and states that it won’t protect mobile operations.<sup>10</sup> Finally, the ARRL petition strongly opposes the extrapolation factor adopted in the BPL Report and Order.<sup>11</sup> Thus, the ARRL contradicts the BPL Report and Order on most every key issue.

Aside from the procedural defects, ARRL’s untimely challenge to the BPL Report and Order is unsupported. The FCC rules do not dictate technology approaches. Instead the rules permit BPL operators to adopt their own technology approaches, provided they comply with the emission limits and do not cause harmful interference to licensed operations. The rules also put in place safeguards to remedy interference, in the unlikely

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<sup>9</sup> ARRL Petition at 15. *But see* Letter from Bruce Franca, Deputy Chief, OET to Thomas A. Brown (Jul. 22, 2004)(responding to Amateur interference complaint and concluding that the Progress Energy trial in the Raleigh, NC area was in compliance with the FCC rules and the measures used to notch frequencies used by the Amateur Radio Service were effective.)

<sup>10</sup> ARRL Petition at 8.

<sup>11</sup> ARRL Petition at 9-12.

event that it occurs. In fact, the BPL operators that use the HF band on medium-voltage lines have been very effective in mitigating rare instances of interference to Amateur radio users, demonstrating that the FCC rules will work if given the chance and that the further steps recommended by the ARRL are unnecessary and unjustified.<sup>12</sup> In short, the FCC rules protect *all* radio users by taking a technology-neutral approach. That approach is fair and balanced and should be given a chance to work.

#### **IV. Conclusion**

The ARRL filing is procedurally defective, premature and ill-conceived and should be summarily dismissed or denied. Its only value is its express acknowledgement that BPL systems can and do coexist with Amateur operations. The UPLC recommends that the FCC should conclude its present proceeding expeditiously and give the new rules a chance to work before taking up any further proposals that call for drastic changes to the new regulatory framework.

Despite ARRL claims to the contrary, changing the rules in midstream would have a profoundly negative effect on the deployment of BPL systems and the evolution of BPL technology. Thus, it is imperative to dismiss or deny the ARRL Petition, which could create regulatory uncertainty as long as it remains pending.

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<sup>12</sup> See e.g. Letter from Bruce Franca, Deputy Chief, OET to Thomas A. Brown (Jul. 22, 2004)(responding to Amateur interference complaint and concluding that the Progress Energy trial in the Raleigh, NC area was in compliance with the FCC rules and the measures used to notch frequencies used by the Amateur Radio Service were effective.)

**WHEREFORE, THE PREMISES CONSIDERED**, the UPLC moves  
that the FCC summarily dismiss or deny the ARRL filing as soon as  
possible.

Respectfully submitted,

**UPLC**

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November 10, 2005.

## **SERVICE LIST**

This Opposition and Motion for Summary Dismissal is being re-filed with the FCC today, November 10, 2005 due to a problem with the ECFS filing that was made on November 2, 2005.

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